

1 GLYNN & FINLEY, LLP  
 CLEMENT L. GLYNN, Bar No. 57117  
 2 ADAM D. FRIEDENBERG, Bar No. 205778  
 JONATHAN A. ELDREDGE, Bar No. 238559  
 3 One Walnut Creek Center  
 100 Pringle Avenue, Suite 500  
 4 Walnut Creek, CA 94596  
 Telephone: (925) 210-2800  
 5 Facsimile: (925) 945-1975  
 Email: [cglynn@glynnfinley.com](mailto:cglynn@glynnfinley.com)  
 6 [afriedenberg@glynnfinley.com](mailto:afriedenberg@glynnfinley.com)  
[jeldredge@glynnfinley.com](mailto:jeldredge@glynnfinley.com)

7 Attorneys for Defendant  
 8 ConocoPhillips Company

9  
 10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA

12 HOUTAN PETROLEUM, INC.

13 Plaintiff,

14 vs.

15 CONOCOPHILLIPS COMPANY, a Texas  
 corporation and DOES 1 through 10,  
 16 Inclusive

17 Defendants.

Case No. 3:07-cv-5627

**DECLARATION OF JONATHAN A.  
 ELDREDGE IN SUPPORT OF  
 CONOCOPHILLIPS COMPANY'S  
 MOTION FOR SUMMARY JUDGMENT  
 OF PLAINTIFF'S COMPLAINT**

**Date: May 9, 2008**  
**Time: 10:00 a.m.**  
**Courtroom: 1**  
**Before: Hon. Samuel Conti**

18  
 19  
 20 I, Jonathan A. Eldredge, say:

21 1. I am an attorney licensed to practice in the State of California, and I am a member  
 22 of the bar of this Court. I know the following facts of my own personal knowledge and if called  
 23 upon could and would competently testify thereto.

24 2. Attached as **Exhibit A** is a true and correct copy of Houtan Petroleum's  
 25 President's, Ed Bozorghadad, April 19, 2007 letter to John Vidovich, a partner of De Anza  
 26 Properties, requesting a lease for the station property in Mountain View, California. Mr.  
 27 Bozorghadad's letter was produced by De Anza Properties in response to ConocoPhillips'  
 28 January 17, 2008 subpoena.



# **EXHIBIT A**

**Ed Bozorghadad**  
700 S Bernardo Ave, Suite 103  
Sunnyvale, CA 94087  
Tel: 408-691-7971  
Fax: 408-736-2503  
Email: [hadad@sbcglobal.net](mailto:hadad@sbcglobal.net)

April 19, 2007

Mr. John Vidovich  
920 W Fremont Ave  
Sunnyvale, CA 94087

Dear Mr. Vidovich,

I appreciate your taking the time to talk to me. I would like to elaborate on the plan I have for 101 E El Camino Real, Mountain View, CA 94040.

My plan is to raze and rebuild the site for a car wash, snack shop and gas. If the city does not agree with the plans, we will have to eliminate the car wash and just go for gas and snack shop. The underground tanks and piping will be double-walled and have state of the art monitoring technology. The approximate cost is between \$2.5 to \$3.1 million. I would like to ask you to consider 15-20 years lease and 2 5-years option.

Thank you once again for your time and I look forward to hearing from you.

Thank you.

Regards,

15 25  


Ed Bozorghadad  
President

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HOUTAN PETROLEUM, INC.,	)	Case No. 07-5627 SC
	)	
Plaintiff,	)	
	)	ORDER DENYING
v.	)	PLAINTIFF'S MOTION
	)	FOR PRELIMINARY
CONOCOPHILLIPS COMPANY, a Texas	)	<u>INJUNCTION</u>
Corporation and DOES 1 through 10,	)	
Inclusive,	)	
	)	
Defendants.	)	
	)	
	)	

**I. INTRODUCTION**

This matter comes before the Court on the Ex Parte Application for a Temporary Restraining Order and Preliminary Injunction ("Application") by the plaintiff Houtan Petroleum, Inc. ("Plaintiff" or "Houtan"). See Docket No. 3. The Court issued a Temporary Restraining Order and an Order to Show Cause regarding the preliminary injunction on November 6, 2007. See Docket No. 8 ("TRO"). The defendant ConocoPhillips Company ("Conoco" or "Defendant") then filed a Response and Plaintiff submitted a Reply. See Docket Nos. 11, 16. For the following reasons, the Court DENIES Plaintiff's Application for Preliminary Injunction.

**II. BACKGROUND**

Houtan operated a Union 76 gas station ("the Station") as a

1 Conoco franchisee at the same location for approximately 10 years.  
2 Compl., Docket No. 1, at 1; Haddad Decl. ¶ 3.<sup>1</sup> Conoco did not own  
3 the Station property but instead leased it from a third-party,  
4 V.O. Limited Partners ("V.O. Limited").<sup>2</sup> Mathews Decl. ¶ 3.<sup>3</sup>  
5 Conoco owns the structures, equipment and improvements at the  
6 Station. Id.

7 The previous franchise agreement between Houtan and Conoco  
8 was set to expire on August 31, 2007.<sup>4</sup> Pellegrino Decl. ¶ 3.<sup>5</sup> The  
9 Master Lease between Conoco and V.O. Limited was set to expire on  
10 October 31. Id. On July 6, Houtan and Conoco executed a new  
11 franchise agreement ("the Franchise Agreement") that would begin  
12 September 1. Haddad Decl. Ex. A.<sup>6</sup> The Franchise Agreement was to  
13 be for a term of three years, expiring on August 31, 2010. Resp.  
14 at 3. The Franchise Agreement was executed, however, with the  
15 understanding by both Houtan and Conoco that Conoco's Master Lease  
16 for the Station property was set to expire on October 31, just two  
17 months after the new Franchise Agreement was set to begin. Resp.

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18 <sup>1</sup> Ed Haddad is the President of Houtan. His declaration was  
19 submitted with Houtan's Application.

20 <sup>2</sup> This lease will be referred to as the Master Lease.

21 <sup>3</sup> Richard Mathews is an independent contractor for the Real  
22 Estate Department of Conoco. His declaration was submitted with  
Conoco's Response.

23 <sup>4</sup> Unless otherwise noted, all further dates are from 2007.

24 <sup>5</sup> Dan Pellegrino is an Account Representative for Conoco.  
25 His declaration was submitted with Conoco's Response.

26 <sup>6</sup> Although Haddad states in his declaration that the  
27 Agreement was executed on March 30, the dates contained in the  
actual agreement all reflect that it was executed on July 6. See  
Haddad Decl. Ex. A at 80.

1 at 2. Thus, if Conoco was unable to renew the Master Lease with  
2 V.O. Limited, the Franchise Agreement would terminate as Conoco  
3 would lose any right to occupy or sublease the Station.  
4 Pellegrino Decl. ¶ 3. As Pellegrino stated: "In the event  
5 ConcoPhillips was unable to renew its underlying lease [the Master  
6 Lease] of the Station property, there was obviously no way it  
7 would be able to continue to sublease the Station to Houtan  
8 Petroleum. ConocoPhillips had no further right to renew or extend  
9 the underlying property lease." Id.

10 Not only did Conoco explain this situation to Houtan as early  
11 as May, but the Agreement itself, which was executed on July 6,  
12 contained express language putting Houtan on notice that Conoco's  
13 inability to renew the Master Lease with V.O. Limited would  
14 necessarily result in termination of the Agreement. The Agreement  
15 states, in part:

16 There is a possibility that the term of  
17 the underlying lease [the Master Lease]  
18 to the Station might expire and not be  
19 renewed upon the underlying lease's  
20 expiration date. DEALER [Houtan] hereby  
21 acknowledges CONOCOPHILLIPS' disclosure  
22 to DEALER that this Agreement and the  
23 Station herein are subject to all terms  
24 and conditions of an underlying lease  
25 held by CONOCOPHILLIPS in the property  
26 and premises, which underlying lease  
27 expires on October 31, 2007 and that such  
28 underlying lease may expire and may not  
be renewed during the Term of this  
Agreement. Thereby, the DEALER [Houtan]  
is hereby on notice that this Agreement  
is hereby terminated on the date the  
underlying lease expires . . . .

26 Haddad Decl., Ex. A at 63 (emphasis in original). Houtan  
27 acknowledged this language in the Agreement by placing initials  
28



1 immediately following the above-cited language. See id. In  
2 addition, Conoco, on several occasions, verbally advised Houtan of  
3 the ramifications of nonrenewal of the Master Lease. See  
4 Pellegrino Decl. ¶ 4 (stating "Throughout 2007, I explained all of  
5 this to Mr. Hadad [sic] in numerous conversations during routine  
6 meetings and visits to the Station. Mr. Hadad [sic] told me that  
7 Houtan Petroleum still wanted to continue its franchise  
8 relationship with Conoco . . . ."). With this understanding, the  
9 parties executed the Franchise Agreement on July 6. Haddad Decl.,  
10 Ex. A at 80.

11 The Master Lease between Conoco and V.O. Limited for the  
12 Station property was initially for a 25 year term, beginning March  
13 1, 1966, and expiring February 28, 1991. Mathews Decl. ¶ 4. A  
14 subsequent modification extended the expiration date to October  
15 31, 2002, and granted Conoco an option for an additional five year  
16 term. Id. Conoco exercised that option and the Master Lease  
17 expired October 31, 2007. Id. Conoco has submitted evidence  
18 indicating that it made several attempts to renew or extend the  
19 Master Lease beyond the October 31 date. Id. ¶ 5. According to a  
20 sworn declaration submitted by Conoco, V.O. Limited never provided  
21 a substantive response to Conoco's request to extend the Master  
22 Lease and V.O. Limited eventually stopped responding to Conoco's  
23 communications. Id. On September 17, Conoco advised V.O. Limited  
24 that if V.O. did not respond by September 21 to Conoco's request  
25 to extend the Master Lease, Conoco would consider such silence a  
26 rejection. Id. V.O. Limited did not respond to this letter. Id.

1 On September 18, Conoco informed Houtan in writing that it  
2 would be terminating the Franchise Agreement effective October 31.  
3 Haddad Decl., Ex. B. The letter stated that the reason Conoco was  
4 terminating the Franchise Agreement was because of Conoco's  
5 inability to renew the Master Lease with V.O. Limited. Id. On  
6 October 16, Houtan entered into an agreement with V.O. Limited to  
7 lease the Station property beginning November 1, the day after  
8 Conoco's Master Lease ended. Haddad Decl. ¶ 8. On October 18,  
9 Houtan sent Conoco a letter indicating that Houtan had entered  
10 into a lease agreement with V.O. Limited for the Station property.  
11 Id. ¶ 9; Ex. C, Ex. D. In the same letter Houtan demanded that  
12 Conoco sell its improvements and equipment on the Station property  
13 to Houtan. Id.

14 On October 22, Conoco sent a letter to Houtan stating that  
15 Conoco would sell the improvements and equipment to Houtan for  
16 \$340,000 if the offer was accepted by October 29, and if Houtan  
17 paid the full amount by certified check by October 31. Haddad  
18 Decl., Ex. E. Houtan refused to make this payment, believing it  
19 to be in excess of fair market value. Haddad Decl. ¶ 21.

20 On October 31, Conoco sent bulldozers to the premises to  
21 begin removal of its equipment and improvements. Id. ¶ 12.  
22 Houtan refused to permit Conoco to enter the premises and Conoco  
23 subsequently cut off fuel to the Station. Id. ¶ 15. Houtan was  
24 able to obtain a fuel supply from another supplier. Pellegrino  
25 Decl. ¶ 7.

26 On November 5 Houtan filed a Complaint in this Court seeking  
27  
28

1 damages, injunctive relief, equitable relief and declaratory  
2 relief pursuant to the Petroleum Marketing Practices Act ("PMPA"),  
3 15 U.S.C. § 2801, et seq. On the same day Houtan filed an Ex  
4 Parte Motion for a Temporary Restraining Order and Application for  
5 Preliminary Injunction. On November 6 the Court granted the  
6 Temporary Restraining Order and enjoined Conoco from taking  
7 further action to interfere with Houtan's immediate assumption of  
8 control of the Station. See TRO. The TRO prevented Conoco from  
9 removing any equipment or improvements and compelled Conoco to  
10 resume its franchise relationship with Houtan by supplying fuel  
11 and processing credit card sales from the Station. Id.

12 The Court now addresses whether to issue a preliminary  
13 injunction. For the following reasons, the Court finds that a  
14 preliminary injunction is not "necessary to remedy the effects of  
15 any failure to comply with the requirements of section 2802 or  
16 2803 . . . ." 15 U.S.C. § 2805(b).

### 17 18 III. DISCUSSION

#### 19 A. Legal Standard

20 "The PMPA is intended to protect gas station franchise owners  
21 from arbitrary termination or nonrenewal of their franchises with  
22 large oil corporations and gasoline distributors . . . ."  
23 DuFresne's Auto Serv., Inc. v. Shell Oil Co., 992 F.2d 920, 925  
24 (9th Cir. 1993). The PMPA states that if "a franchisor fails to  
25 comply with the requirements of section 2802 or 2803 of this  
26 title, the franchisor may maintain a civil action against such  
27 franchisor." 15 U.S.C. § 2805. The PMPA also provides for  
28

1 preliminary injunctions, stating:

2 [T]he court shall grant a preliminary  
3 injunction if (A) the franchisee shows:  
4 (i) the franchise of which he is a party  
5 has been terminated or the franchise  
6 relationship of which he is a party has  
7 not been renewed, and (ii) there exist  
8 sufficiently serious questions going to  
9 the merits to make such questions a fair  
10 ground for litigation; and (B) the court  
determines that, on balance, the  
hardships imposed upon the franchisor by  
the issuance of such preliminary  
injunctive relief will be less than the  
hardship which would be imposed upon such  
franchisee if such preliminary injunctive  
relief were not granted.

11 Id. "The franchisee bears 'the burden of proving the termination  
12 of the franchise . . . .' The franchisor then bears 'the burden  
13 of going forward with evidence to establish as an affirmative  
14 defense that such termination . . . was permitted under section  
15 2802(b) or 2803.'" BP W. Coast Prods. LLC v. May, 447 F.3d 658,  
16 663 n.1 (9th Cir. 2006) (citing 15 U.S.C. § 2805(c)).

17 **B. Analysis**

18 **1. Termination of Franchise Agreement**

19 Both parties concede that the Franchise Agreement was  
20 terminated on October 31.

21 **2. Sufficiently Serious Questions Going to the Merits**

22 Houtan alleges that Conoco violated PMPA in three respects:  
23 (1) terminating the Franchise Agreement without good faith or in  
24 the normal course of business, as required by § 2802; (2) failing  
25 to give 90 days notice before terminating the franchise, as  
26 required by § 2804(a)(2); and (3) failing to make a bona fide  
27 offer to sell the equipment and improvements of the Station to  
28

1 Houtan, as required by § 2802(c)(4)(C)(i). The Court addresses  
2 the merits of each claim in turn.

3 **a. Termination of Agreement**

4 Houtan alleges that Conoco has "wrongfully terminated the  
5 Plaintiff's Franchise Agreement and that said termination was not  
6 made in good faith and/or in the normal course of business."  
7 Compl. ¶ 27. "Section 2802(b)(2) of the PMPA provides several  
8 permissible grounds for termination or nonrenewal of a franchise."  
9 Hifai v. Shell Oil Co., 704 F.2d 1425, 1428 (9th Cir. 1983).  
10 Specifically, § 2802 states that "the following are grounds for  
11 termination of a franchise or nonrenewal of a franchise: . . . (C)  
12 [t]he occurrence of an event which is relevant to the franchise  
13 relationship and as a result of which termination of the franchise  
14 or nonrenewal of the franchise relationship is reasonable . . . ."  
15 15 U.S.C. § 2802(b)(2)(C). "Section 2802(c)(4) provides that the  
16 term 'event' as used in section 2802(b)(2)(C) includes 'loss of  
17 the franchisor's right to grant possession of the leased marketing  
18 premises through expiration of an underlying lease.'" Hifai, 704  
19 F.2d at 1428 (citing 15 U.S.C. § 2802(c)(4)).

20 Under the evidence submitted by the parties, the Court cannot  
21 conclude that Conoco's termination of the Franchise Agreement was  
22 not in good faith. To the contrary, Conoco terminated the  
23 Franchise Agreement based on the fact that Conoco was unable to  
24 renew the Master Lease with V.O. Limited for the Station property.  
25 As § 2802 states, "loss of the franchisor's right to grant  
26 possession of the leased marketing premises through expiration of  
27 an underlying lease," is grounds for termination of a franchise.

1 15 U.S.C. § 2802.

2 Nonetheless, a franchisor must adhere to certain statutory  
3 requirements in terminating a franchise agreement based on the  
4 loss of the underlying lease for the land. "A franchisor can rely  
5 on section 2802(c)(4) to justify nonrenewal only if:

6 [T]he franchisee was notified in writing,  
7 prior to the commencement of the term of  
8 the then existing franchise-  
9 (A) of the duration of the  
10 underlying lease, and  
11 (B) of the fact that such underlying  
12 lease might expire and not be  
13 renewed during the term of such  
14 franchise (in the case of  
15 termination) or at the end of the  
16 term (in case of nonrenewal)."

17 Hutchens v. Eli Roberts Oil Co., 838 F.2d 1138, 1142-43 (11th Cir.  
18 1988) (citing 15 U.S.C. § 2802(c)(4)).

19 In the present case, Conoco has satisfied both of these  
20 requirements. As noted above, the Franchise Agreement signed by  
21 both parties on July 6 contains the following language:

22 There is a possibility that the term of  
23 the underlying lease [the Master Lease]  
24 to the Station might expire and not be  
25 renewed upon the underlying lease's  
26 expiration date. DEALER [Houtan] hereby  
27 acknowledges CONOCOPHILLIPS' disclosure  
28 to DEALER that this Agreement and the  
29 Station herein are subject to all terms  
30 and conditions of an underlying lease  
31 held by CONOCOPHILLIPS in the property  
32 and premises, which underlying lease  
33 expires on October 31, 2007 and that such  
34 underlying lease may expire and may not  
35 be renewed during the Term of this  
36 Agreement. Thereby, the DEALER [Houtan]  
37 is hereby on notice that this Agreement  
38 is hereby terminated on the date the  
39 underlying lease expires . . . .

40 Haddad Decl., Ex. A at 63 (emphasis in original).

1 In addition, Conoco has submitted evidence indicating that it  
2 repeatedly attempted to renew the Master Lease with V.O. Limited.  
3 See Mathews Decl. ¶ 5. Furthermore, as Conoco was attempting to  
4 renew the Master Lease, Houtan was in contact with V.O. Limited  
5 and eventually negotiated a direct lease for the Station property.  
6 The Franchise Agreement provided a single monthly rent for  
7 Houtan's use of the Station property, the Union 76 trademarks and  
8 the equipment and improvements. Haddad Decl. Ex. A. Considering  
9 that the Franchise Agreement between Houtan and Conoco was  
10 premised on Conoco's Master Lease with V.O. Limited, Houtan could  
11 reasonably have expected that by negotiating directly with V.O.  
12 Limited to take over the Master Lease, the Franchise Agreement  
13 with Conoco would be terminated. For the foregoing reasons, the  
14 Court finds that there are not sufficiently serious questions  
15 going to the merits of Houtan's claim that termination of the  
16 Agreement was not made in good faith such that a preliminary  
17 injunction is warranted.

18 **b. 90-Day Notice of Termination Under § 2804(a)**

19 Houtan asserts that the notice provided by Conoco was  
20 defective under § 2804(a). Section 2804(a) states, in part:

21 Prior to termination of any franchise or  
22 nonrenewal of any franchise relationship,  
23 the franchisor shall furnish notification  
24 of such termination or nonrenewal to the  
franchisee . . . not less than 90 days  
prior to the date on which such  
termination or nonrenewal takes effect.

25 15 U.S.C. § 2804(a).

26 Houtan argues that because Conoco informed Houtan in writing  
27 on September 18 that it would be terminating the franchise  
28

1 Agreement on October 31, Conoco failed to provide the requisite  
2 90-day notice of termination. This argument ignores the fact that  
3 Houtan was on notice as early as July 6 that the Franchise  
4 Agreement would be terminated in the event that Conoco was unable  
5 to secure a renewal of the Master Lease. Houtan executed the  
6 renewed Franchise Agreement on July 6, and, as detailed above, the  
7 Agreement contained express language indicating that Conoco's  
8 inability to renew the Master Lease would necessarily require  
9 termination of the Franchise Agreement. The Court therefore finds  
10 that there are not sufficiently serious questions going to the  
11 merits of Houtan's claim that Conoco failed to give 90 days notice  
12 of termination such that a preliminary injunction would be  
13 warranted.

14 In the alternative, Conoco also argues that even if the  
15 notice did not comply with the 90 day notice requirement of §  
16 2804(a), the notice was in compliance with § 2804(b) and was  
17 therefore permissible. Section 2804(b) provides:

18 In circumstances in which it would not be  
19 reasonable for the franchisor to furnish  
20 notification, not less than 90 days prior  
21 to the date on which termination . . .  
22 takes effect, as required by subsection  
23 (a)(2) of this section, such franchisor  
shall furnish notification to the  
franchisee . . . on the earliest date . .  
such notification is reasonably  
practicable.  
15 U.S.C. § 2804(b)(1).

24 In the present case, Conoco was unable to renew the Master  
25 Lease. On September 18 Conoco sent notice to Houtan indicating  
26 that the Franchise Agreement would not be renewed. This qualifies  
27 as "the earliest date on which furnishing of such notification is  
28



1 reasonably practicable." Id. Thus, even if Conoco's notice was  
2 not within the 90 day statutory period, it very likely was within  
3 the alternative statutory period of § 2804(b)(1).

4 Finally, the Court's finding that there is not a sufficiently  
5 serious question going to the merits of Houtan's notice claim is  
6 supported by the decisions of other courts. See, e.g., Harara v.  
7 ConocoPhillips Co., 377 F. Supp. 2d 779, 792 (N.D. Cal. April 29,  
8 2005) (finding that "defendant was justified in terminating the  
9 franchise with ten days notice"); Murphy Oil USA, Inc. v. Brooks  
10 Hauser, 820 F. Supp. 447, 443 (D. Minn. 1993) (stating "14 days  
11 notice of termination is not an unreasonable amount of time" given  
12 that plaintiff had failed to pay for gasoline and rent); Smoot v.  
13 Mobil Oil Corp., 722 F. Supp. 849, 855 (D. Mass. 1989) (holding  
14 that four weeks was reasonable notice for termination).

15 For these reasons, the Court finds that there are not  
16 sufficiently serious questions going to the merits of Houtan's  
17 claim that Conoco failed to give the requisite notice of  
18 termination.

19 **c. Bona Fide Offer Under § 2802(c)(4)(C)(i)**

20 The heart of Houtan's Complaint is that Conoco did not make a  
21 bona fide offer to sell Conoco's equipment and improvements on the  
22 Station property to Houtan. "When a franchisor decides for  
23 legitimate business reasons not to renew a franchise relationship,  
24 the franchisor must give the franchisee a bona fide offer to  
25 purchase the station." Ellis v. Mobil Oil, 969 F.2d 784, 788 (9th  
26 Cir. 1992). This is premised on § 2802, which states:

27 In a situation in which the franchisee

1 acquires possession of the leased  
2 marketing premises, . . . the franchisor  
3 (if so requested) . . . [shall make] a  
4 bona fide offer to sell, transfer, or  
assign to the franchisee the interest of  
the franchisor in any improvements or  
equipment located on the premises . . . .

5 15 U.S.C. § 2802(c)(4)(C)(i).

6 In the present case, it is undisputed that Conoco made an  
7 offer to sell the equipment and improvements of the Station to  
8 Houtan. Houtan instead argues that the offer was not bona fide  
9 because the price that Conoco asked was too high and because  
10 Houtan was given only 7 days to accept the offer and only 9 days  
11 to make full payment.

12 **i. Price**

13 "It is settled law that a bona fide offer under PMPA is  
14 measured by an objective market standard." Ellis, 969 F.2d at  
15 787. "To be objectively reasonable, an offer must approach fair  
16 market value." Id. (internal quotation marks and alterations  
17 omitted). Nonetheless, "Congress' decision not actually to use  
18 the term 'fair market value' but instead the term bona fide . . .  
19 suggests some degree of deference." Slatky v. Amoco Oil Co., 830  
20 F.2d 476, 485 (9th Cir. 1987). Thus, in deciding "what manner  
21 courts should scrutinize the distributor's offer to determine  
22 whether it complies with the requirement . . . [Congress's] choice  
23 indicates . . . a recognition that the word 'value' almost always  
24 involves a conjecture, a guess, a prediction, a prophesy." Id.  
25 (internal quotation marks and citations omitted). Accordingly,  
26 "[t]he facts of each case will set the terms of what constitutes a  
27 bona fide offer." Ellis, 969 F.2d at 788.

1 In the present case, Conoco has offered to sell its equipment  
2 and improvements to Houtan for \$340,000. Haddad Decl., Ex. E.  
3 This price was based on an independent, third-party appraisal  
4 prepared by a licensed appraiser. Mathews Decl. ¶ 7; Ex. E.  
5 Houtan claims that this amount vastly exceeds fair market value  
6 and argues instead that the equipment and improvements are worth  
7 no more than \$120,000. Haddad Decl. ¶ 22. In support of this  
8 Houtan submitted the declaration of its president, Ed Haddad.

9 The Court cannot conclude from the evidence before it whether  
10 the price contained in the offer by Conoco was bona fide. That  
11 said, the parties' disagreement as to the value of the equipment  
12 and improvements is not grounds for a preliminary injunction.  
13 Thus, the issue that remains in this action is whether the price  
14 contained in the offer was reasonable, and, therefore, whether the  
15 offer was bona fide. This is a factual dispute and, as such, is a  
16 question for the jury.

17 **ii. Time of Offer**

18 Houtan also argues that the offer was not bona fide because  
19 the time period given by Conoco to accept the offer was  
20 unreasonably short. Conoco sent a letter on September 18 to  
21 Houtan stating that the Franchise Agreement would terminate on  
22 October 31 because of Conoco's inability to renew the Master  
23 Lease. Haddad Decl. ¶ 6; Ex. B. On October 16, Houtan entered  
24 into an agreement with V.O. Limited to lease the Station property  
25 beginning November 1. Id. ¶ 8; Ex. C. On October 18, Houtan sent  
26 Conoco a letter indicating that Houtan had entered into this lease  
27 agreement and demanding that Conoco sell its improvements and  
28

1 equipment on the Station property to Houtan. Id. ¶ 9; Ex. C, Ex.  
2 D.

3 According to these facts, Houtan had notice on September 18  
4 that the Franchise Agreement would not be renewed but waited until  
5 October 18 to demand an offer for the equipment and improvements.<sup>7</sup>  
6 Although unclear, it appears that Houtan waited these 30 days  
7 because Houtan was negotiating with V.O. Limited to assume the  
8 Master Lease of the Station property. Thus, the fact that Houtan  
9 had only 7 days to accept Conoco's offer is, in part, Houtan's  
10 doing.<sup>8</sup>

11 In addition, Conoco had compelling reasons why it needed to  
12 complete the sale of the equipment and improvements before  
13 November 1. The Master Lease Conoco has with V.O. Limited was set  
14 to expire October 31. In the event that Houtan did not buy the  
15 equipment and improvements, Conoco wanted the opportunity to  
16 remove its improvements and equipment from the Station before the  
17 Master Lease expired.

18 For these reasons the Court finds that, under the  
19 circumstances of the case, the time of the offer does not give  
20 rise to sufficiently serious questions going to the merits of  
21

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22 <sup>7</sup> Section 2802 states that the franchisor must make a bona  
23 fide offer only "if requested in writing by the franchisee . . . ."  
24 15 U.S.C. § 2804(c)(4)(C). Section 2802 also states that this  
25 request by franchisee must be made "not later than 30 days after  
notification was given . . . ." Id. In the present case, the  
request was made exactly 30 days after the September 18 letter.

26 <sup>8</sup> On October 22, Conoco sent a letter to Houtan stating that  
27 Conoco would sell the improvements and equipment if the offer was  
28 accepted by October 29, and paid in full by October 31. Haddad  
Decl. Ex. E.

1 Houtan's claim that Conoco failed to make a bona fide offer such  
2 that a preliminary injunction would be warranted.

3 The Court emphasizes that in reaching these conclusions  
4 regarding the offer, the Court does not hold that the offer was  
5 necessarily reasonable. Instead, the Court finds that the issue  
6 of the offer is not, by itself, sufficient justification for a  
7 preliminary injunction. This is especially true given that Conoco  
8 has stipulated to leaving in place its equipment and improvements  
9 pending the outcome of this action and pending Houtan's and V.O.  
10 Limited's agreement to several issues, including an appropriate  
11 interim rental payment, allocation of responsibility for  
12 environmental compliance and an appropriate manner and time for  
13 removal in the event Houtan ultimately decides not to purchase the  
14 equipment and improvements.<sup>9</sup>

### 15 3. Balance of Hardships

16 The final factor in the determination of whether a  
17 preliminary injunction should issue requires the Court to balance  
18 the hardships to each party. Section 2805 states:

19 [T]he court shall grant a preliminary  
20 injunction if . . . the court determines  
21 that, on balance, the hardships imposed  
22 upon the franchisor by the issuance of  
23 such preliminary injunctive relief will  
be less than the hardship which would be  
imposed upon such franchisee if such  
preliminary injunctive relief were not  
granted.

24 15 U.S.C. § 2805(b)(2).

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25  
26 <sup>9</sup> Under the Master Lease Conoco had 10 days after termination  
27 of the lease to remove its equipment and improvements. Mathews  
Decl. ¶ 8.

1 In the present case Houtan knew as early as July 6 that the  
2 Franchise Agreement would end on October 31 if Conoco were unable  
3 to renew the Master Lease. On September 18 Houtan received  
4 confirmation that Conoco was unable to renew the Master Lease. On  
5 October 16 Houtan entered into a lease agreement for the Station  
6 property with V.O. Limited.

7 The Franchise Agreement, while providing Houtan with a  
8 limited license to use Union 76 trademarks, was primarily a  
9 sublease of the Station property by Conoco to Houtan. Because the  
10 Master Lease expired, Conoco has no ability to continue to  
11 sublease the property to Houtan. To the contrary, Houtan has  
12 negotiated with V.O. Limited to take over this lease. Therefore,  
13 there is no dispute that the Franchise Agreement between Houtan  
14 and Conoco had terminated, for there was no way that Conoco could  
15 still perform under the Franchise Agreement in the absence of the  
16 Master Lease.

17 Given these facts, it is difficult to see how the hardships  
18 imposed upon Conoco by the issuance of the preliminary injunction  
19 will be less than the hardship imposed upon Houtan if the  
20 preliminary injunction were not granted. The Franchise Agreement  
21 provided a single monthly payment for Houtan's use of the Station  
22 property, the Union 76 trademarks and the equipment and  
23 improvements. Haddad Decl., Ex. A. Houtan is now essentially  
24 asking the Court to create a new franchise agreement that is  
25 identical to the Franchise Agreement at issue save for the fact  
26 that Houtan, rather than Conoco, controls the lease to the Station  
27 property. The Court is unwilling to do this. The termination of  
28

1 the Master Lease was a valid reason for the termination of the  
2 Franchise Agreement. See 15 U.S.C. § 2802(c)(4) (stating  
3 "termination of the franchise . . . is reasonable . . . [due to]  
4 loss of the franchisor's right to grant possession of the leased  
5 marketing premises through expiration of an underlying lease . .  
6 .").

7 Houtan has not presented compelling evidence that it will  
8 face substantial hardships without the preliminary injunction.  
9 After the Franchise Agreement terminated but before the Court  
10 issued the temporary restraining order, Houtan was able to  
11 purchase fuel from another supplier and was able to continue  
12 operating the Station. Furthermore, because Conoco has agreed to  
13 leave its equipment and improvements in place pending party  
14 negotiation or judicial determination of an appropriate purchase  
15 price, Houtan will be able to continue operating the Station. The  
16 primary hardship to Houtan will be the requirement that it stop  
17 operating the station as a Union 76 station, as the Union 76  
18 trademarks were licensed to Houtan by Conoco pursuant to the  
19 Franchise Agreement and, as noted above, both parties agree that  
20 this agreement terminated on October 31.

21 Conoco, on the other hand, would suffer some hardship.  
22 Conoco would be forced to leave its fuel storage and dispensation  
23 system at a station site over which it has no control and no right  
24 of entry. In light of the environmental issues associated with a  
25 gas station, Conoco would be exposed to risks if it were unable to  
26 supervise or ensure prudent station practices and compliance with  
27 applicable regulations. Accordingly, the Court cannot conclude  
28

1 that, on balance, the hardships imposed upon Conoco by the  
2 issuance of a preliminary injunction will be less than the  
3 hardship which would be imposed upon Houtan if the preliminary  
4 injunction were not granted.

5 Because the Court finds that a preliminary injunction is not  
6 necessary under the more permissive standard of the PMPA, it need  
7 not reach the issue of whether a preliminary injunction would be  
8 appropriate under Federal Rule of Civil Procedure 65, which  
9 requires a more substantial showing. See Dollar Rent A Car of  
10 Wash., Inc. v. Travelers Indem., 774 F.2d 1371, 1374 (9th Cir.  
11 1985) (stating that the granting of a preliminary injunction is  
12 discretionary, compared with the mandatory language of § 2805, and  
13 that a showing of irreparable injury is an essential  
14 prerequisite); see also Khorenian v. Union Oil Co. of Cal., 761  
15 F.2d 533, 535 (9th Cir. 1985) (stating that the "test for the  
16 issuance of a preliminary injunction under the PMPA is more  
17 liberal than that in the general run of cases").

#### 18 4. Houtan's Use of Union 76 Trademarks

19 The Franchise Agreement states, in part:

20 Upon expiration, termination, nonrenewal  
21 or cancellation of this Agreement, for  
22 any reason, DEALER shall immediately  
cease and discontinue the use of said  
Union 76 Marks . . . .

23 Haddad Decl., Ex. A at 20. By these terms, Houtan is no longer  
24 entitled to use the Union 76 trademarks.<sup>10</sup>

25 \_\_\_\_\_  
26 <sup>10</sup> The Court notes that Conoco has not filed a motion for an  
27 injunction prohibiting Houtan from using the Union 76 trademarks.  
The Court, therefore, is not presented with an opportunity to rule  
on this issue.



1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff's Application for a  
3 Preliminary Injunction is DENIED and the Temporary Restraining  
4 Order issued by the Court on November 6, 2007, is TERMINATED.

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7 IT IS SO ORDERED.

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9 Dated: November 16, 2007



10 UNITED STATES DISTRICT JUDGE  
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